STATE OF MICHIGAN

COURT OF APPEALS

CHARLES H. MULLINS and LOUISE MULLINS,

Plaintiffs-Appellants,

v

CITIZENS INSURANCE COMPANY OF AMERICA, JILLANNE REYNOLDS, WILLIAM A. DAY, SINN, DAY, FELKER, CHINTZ, LOVERNICK & ROGGENBAUM, P.C. and LACEY & JONES, P.C.,

Defendants-Appellees,

and

JOSEPH M. KOPMEYER, M.D. and MEDICAL EVALUATION SPECIALISTS, INC.,

Defendants.

UNPUBLISHED
March 26, 1999

No. 204662
Wayne Circuit Court
LC No. 96-636869 CZ

Before: Doctoroff, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs first argue that the trial court erred in granting defendants' motions for summary disposition before discovery was complete. We disagree. This Court reviews a motion for summary disposition de novo. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998).

Although summary disposition is premature if discovery of a disputed issue is incomplete, it is appropriate if there is no fair chance that further discovery will result in factual support for the nonmoving party. *Mackey v Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994). Here, plaintiffs' factual allegations do not support a claim of intentional infliction of emotional

distress because the acts alleged do not constitute extreme or outrageous conduct. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602-603; 374 NW2d 905 (1985); *Lisecki v Taco Bell Restaurants, Inc*, 150 Mich App 749, 755; 389 NW2d 173 (1986). Furthermore, summary disposition was not premature because all of the facts that formed the basis of plaintiffs' complaint were already known to them and additional discovery would do little or nothing to support their claim of intentional infliction of emotional distress.

Plaintiffs next argue that the trial court erred by granting summary disposition pursuant to MCR 2.116(C)(8) because they were not given sufficient notice that defendants were moving for summary disposition under MCR 2.116(C)(8). However, we find no merit in plaintiffs' argument. While plaintiffs complain that certain defendants filed a supplemental brief requesting summary disposition pursuant to MCR 2.116(C)(8) on the day before the motion hearing, defendants had already filed motions for summary disposition pursuant to MCR 2.116(C)(10) and briefs in support of the motions. The trial court indicated that it granted summary disposition in favor of defendants for the reasons stated in defendants' briefs. Furthermore, even if the trial court granted summary disposition pursuant to MCR 2.116(C)(8), we do not believe that plaintiffs were unfairly surprised by an argument that summary disposition was appropriate under MCR 2.116(C)(8) where the trial court raised the issue at a previous hearing and where there is little difference between an argument, pursuant to MCR 2.116(C)(8), that plaintiffs failed to allege extreme and outrageous conduct and an argument, pursuant to MCR 2.116(C)(10), that the undisputed facts alleged by plaintiffs failed to support a claim of extreme and outrageous conduct. In any event, summary disposition was proper pursuant to both MCR 2.116(C)(8) and (10).

Plaintiffs next argue that the trial court erred in ruling that insurance companies and their adjusters are not liable for damages resulting from their intentional torts. However, the trial court did not rule that, as a general rule, insurance companies and their adjusters cannot be held liable for damages resulting from their intentional torts. Rather, as we have already stated, the trial court properly ruled that the facts of the instant case do not support a cause of action for intentional infliction of emotional distress.

Plaintiffs next argue that the trial court erred in ruling that attorneys are immune from liability for the tort of intentional infliction of emotional distress. While we agree that the trial court erred in ruling that "an attorney in filing an action [cannot] be sued for intentional infliction of emotional distress by filing a cause of action," *Trepel v Pontiac Osteopathic Hospital*, 135 Mich App 361, 383-384; 354 NW2d 341 (1984), the trial court correctly concluded that the facts alleged by plaintiffs failed to support a claim of intentional infliction of emotional distress against the defendant attorney and law firms in the instant case.

Finally, plaintiffs argue that their claim against the defendant attorneys was not barred by the exclusive remedy provision of the worker's disability compensation act, MCL 418.131; MSA 17.237(131), and that the defendant attorneys did not have standing to assert the exclusive remedy provision as a defense. We agree that plaintiffs' intentional infliction of emotional distress claim against the defendant attorneys was not barred by the exclusive remedy provision. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 190; 551 NW2d 132 (1996)(Boyle, J). However, we need not address

plaintiffs' claim that the defendant attorneys had no standing to assert the exclusive remedy provision as a defense because we have already concluded that the trial court properly granted summary disposition in favor of defendants on grounds other than the exclusive remedy provision.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski
/s/ William C. Whitbeck